

**REMARKS/ARGUMENTS**

Reconsideration and allowance of this application are respectfully requested. Currently, claims 1-25 are pending in this application.

**Request to Initial and Return Form PTO-1449**

Applicant requests initialization and return of the form PTO-1449 (copy attached) of the IDS filed March 28, 2005.

**Rejection Under 35 U.S.C. §112:**

Claims 1-17 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Office Action held that “automatically varying at a customer terminal” is vague. Applicant respectfully disagrees. First, the Office Action does not provide any specific details regarding why this claim limitation is deemed to be indefinite or which specific part(s) of this claim limitation is deemed to be indefinite. Applicant thus requests such details if this rejection is maintained.

Moreover, Applicant submits that the term “automatically varying at a customer terminal” is not indefinite, especially from the overall context of the application whereby a customer terminal has a tariff (i.e., a formula) which gives a price for network usage (for example, price per packet, although other possible examples are given) and which is varied (i.e., such that the same network usage costs a different amount) depending on a measurement made at the customer

terminal of network loading (i.e., how heavily loaded or congested the network is or appears to be from the perspective of the customer terminal).

Page 10, line 23 to page 12, line 10 and the following additional portions of the specification provide support and further clarification of the meaning of the term “automatically varying at a customer terminal”:

“In addition to the local tariff variation mechanism that is described below....” (Pg. 5, line 16).

“In response to changes in these parameters, tariff adjustments may be effected in one of three ways. Firstly, a tariff may adjust prices on the basis of local observations of network loading, without necessitating explicit communication from the provider. This approach, which is described in further detail below, needs to be built into the tariff at the outset, and is limited to those price variations which are dependent exclusively on local observations....The first of the tariff changes described above is necessarily carried out automatically. The second type of change may be performed manually, or by an agent that issues adjustments automatically in response to observations made by the service provider system (emphasis added).” (Pg. 6, line 21- pg. 7, line 2).

“The first of the tariff changes described above is necessarily carried out automatically.” (Pg. 6, lines 32-33).

“Subclasses of the Tariff interface establish a set of tariff types, each of which is associated with a different set of measurement and input parameters. These parameters are identified by listing them in the signature of the `getCharge ()` method. For example, the interface `RSVPTariff` defines `getCharge ()` as receiving n RSVP TSPEC, allowing for the definition of tariffs that compute price on the basis of the characteristics of an RSVP reservation. On the other hand, the interface `PacketCountTariff` defines `getCharge ()` as receiving measurements of packets in, packets out, and current congestion (typically measured as a function of packet drop), allowing for the definition of tariffs that are dependent on packet counts and sensitive to congestion. Other tariffs may be added as new forms of usage-measurement emerge.” (Pg. 7, line 30 – pg. 8, line 7).

“The congestion parameters provide a measure of the *loading of the resources which a customer terminal is making use of* at any given time (emphasis added).” (Pg. 11, lines 22-23).

Applicant thus submits that claims 1-17 are in full conformance with 35 U.S.C. §112.

**Rejection Under 35 U.S.C. §102:**

Claims 1-17 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Mashinsky (U.S. '926). Applicant respectfully traverses this rejection.

For a reference to anticipate a claim, each element must be found, either expressly or under principles of inherency, in the reference. Mashinsky fails to disclose each of the claimed elements. For example, Mashinsky fails to disclose "automatically varying at a customer terminal, depending on network loading as detected at the customer terminal, a tariff or network usage by the customer terminal," as required by independent claim 1. Similar comments apply to independent claims 14, 15 and 16 and their respective dependents. Mashinsky also fails to disclose "applying to customer terminals a tariff for network usage, varying the tariff with time; at a customer terminal, selecting a period of time for which the tariff is to be fixed; and paying a premium depending on the duration of the said period," as required by independent claim 13.

Mashinsky appears to be irrelevant to the present invention, most particularly because it does not concern dynamic pricing. As an analogy, if one considers train travel pricing as being analogous to network usage pricing, the arrangement described in Mashinsky would be analogous to a person who arrives at a train station and asks for the cheapest ticket to a particular destination, with the station master checking the prices charged by various different competing train

companies and selling him/her the cheapest ticket (e.g., with Company X). By contrast, Applicant's invention would be akin to a person arriving at a train station, looking to see how full the train is, pulling out a dynamic tariff fare sheet which says something like "if the train is less than half full, get on for free; if the train is between half-full and completely full, get on for \$10; and if the train is completely full, the arriving person will need to pay \$100 and the station master will go and pay someone already on the train to get off so that the arriving person may have a seat" and paying the appropriate price bearing in mind how full he perceives the train to be. Applicant has provided the above analogy in hopes of facilitating a greater understanding of the meaning of "varying at a customer terminal, depending on network loading as detected at the customer terminal, a tariff..." as required by claim1 and the difference between this limitation and Mashinsky.

The Office Action apparently alleges that col. 2, lines 39-40 of Mashinsky discloses "automatically varying at a customer terminal...." Applicant respectfully disagrees. Col. 2, lines 39-40 of Mashinsky states "Service requests may be submitted manually by a systems manager at the service requestor, or automatically by a telecommunications node associated with the service requestor (emphasis added)." The telecommunications node referred to in the above-described section is certainly not a customer terminal, but a node located deep within the network and owned by a network operator. Moreover, what is being

“automatically” done here in Mashinsky is submission of service requests, not variation of a tariff at a customer terminal.

The telecommunications node (e.g., one of nodes 44-48 of Figure 1 of Mashinsky) is not a customer terminal. The customer terminal in the present invention may be, for example, a PC, PDA or smart-phone device which belongs to the customer and is connected at the edge of the network. By contrast, the nodes 44-49 in Mashinsky are large network devices owned by network operators residing deep in the network (the service requester being a network operator or carrier seeking to find a cost effective route over many other networks in a global network).

The items in Mashinsky which equate to customer terminals are calling and called telephones 2, 4. However, these telephones 2, 4 do not detect network loading, let alone vary a tariff based on the network loading. Indeed, no part of the system described in Mashinsky detects network loading since prices are not dependent on the network loading. There is thus no point in Mashinsky on detecting the network loading anywhere, nor is there any device in Mashinsky which dynamically varies the amount charged by a particular service provider depending on network loading.

The Office Action also alleges that col. 4, lines 3-6 of Mashinsky discloses “...depending on network loading as detected at the customer terminal.” Applicant respectfully disagrees. Col. 4, lines 3-6 of Mashinsky discloses “Called

telephone 4 is similarly connected to a local telephone network 10 via a local loop or another connection, schematically represented by line 12.” This portion of Mashinsky has absolutely nothing to do with determining network loading, let alone automatically varying a tariff depending on the network loading.

The Office Action also alleges that col. 5, lines 11-15 of Mashinsky discloses “...a tariff for network usage by the customer terminal.” Col. 5, lines 11-15 of Mashinsky states “A carrier’s own-cost database 99 (one for each carrier associated with the node), which stores information regarding the internal cost to a carrier to connect a call from potential originating locations to potential terminating locations.” While this portion of Mashinsky discloses internal carrier cost data to connect a call from one location to another, this and all other portions of Mashinsky fail to disclose automatically varying a tariff for network usage by a customer terminal depending on network loading.

Accordingly, Applicant respectfully submits that claims 1-17 are not anticipated by Mashinsky and respectfully requests that the rejection of these claims under 35 U.S.C. §102 be withdrawn.

**New Claims:**

New claims 18-25 have been added. Claims 18-22 are allowable by virtue of being dependent on claims 1 and 13-16, respectively. New independent claim 23 (and claims 24-25 which depend therefrom) requires *inter alia*, “automatically adjusting a tariff for usage of the communications network based on the measured

**BRISCOE et al.**  
**Application No. 09/674,720**  
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local observation of the network loading at the customer terminal.” Claims 18-25 are thus allowable.

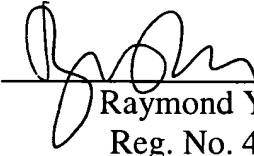
**Conclusion:**

Applicant believes that this entire application is in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:



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